

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

TERWIN ADVISORS LLC,

Plaintiff,

-against-

ATLAS MORTGAGE FUNDING CORP.,

Defendant.

Case No.: 07 Civ. 10731 (LAP)

ECF Case

**DECLARATION OF  
GERALD CASEY  
IN SUPPORT OF  
MOTION FOR  
DEFAULT JUDGMENT**

GERALD CASEY hereby declares, under penalty of perjury:

1. I am a principal of plaintiff Terwin Advisors LLC ("Terwin") responsible for Terwin's Asset Performance Management Group. I am personally familiar with the facts set forth herein.
2. I submit this declaration in support of Terwin's application (the "Application") for entry of a default judgment against defendant Atlas Mortgage Funding Corp. ("Atlas"). Unless otherwise indicated, I have personal knowledge of the facts set forth herein.
3. As set forth in Terwin's Complaint, a copy of which is attached to the accompanying Declaration of Charles R. Jacob III, executed on February 22, 2008 ("Jacob Declaration") as Exhibit 1, Atlas sold Terwin a number of mortgage loans pursuant to a Seller's Purchase, Warranties and Interim Servicing Agreement (the "Purchase Agreement").
4. In the Purchase Agreement, Terwin and Atlas contracted for Atlas to sell to Terwin certain Mortgage Loans (as defined in the Purchase Agreement), subject to the terms and conditions in the Purchase Agreement, and Atlas agreed to repurchase

delinquent with respect to any of the first three (3) Monthly Payments due on the related Mortgage Loan immediately following the applicable Closing Date or (b) the Mortgage Loan was in bankruptcy or litigation within the first three (3) months immediately following the applicable Closing Date.

8. Commencing in or about February 2006, and continuing through September 2007, Terwin gave Atlas written notice of such Early Payment Default Loans and exercised Terwin's option to require Atlas to repurchase such Early Payment Default Loans, all in accordance with the terms of the Purchase Agreement.

9. This action concerns twelve (12) Early Payment Default Loans that Atlas was obligated to repurchase from Terwin. Atlas has failed to repurchase the Early Payment Default Loans or pay Terwin any part of the Repurchase Price.

10. Since Atlas has not appeared in this action, Terwin cannot reconvey the Early Payment Default Loans to Atlas in exchange for the Repurchase Price. Terwin was forced to liquidate Mortgage Loans by foreclosures or other means, and incurred damages as a result.

11. Terwin's damages as to the Early Payment Default Loans consist of the contractual Repurchase Price, as defined in the Complaint, less the actual or estimated proceeds that have been or are expected to be realized from the twelve (12) Early Payment Default Loans that Atlas failed to Repurchase.

12. "Repurchase Price" is defined in Section 1.01 of the Purchase Agreement as follows:

With respect to any Mortgage Loan, a price equal to (i) the greater of (A) the product of the percentage of par stated in the related Purchase Price and Terms Letter and the outstanding principal balance of the Mortgage Loan and

(B) the outstanding principal balance of the Mortgage Loan, plus (ii) interest on such outstanding principal balance at the related Mortgage Interest Rate from the date through which interest was last distributed to the Purchaser through the day prior to the date of repurchase, plus (iii) any costs and damages actually incurred and paid by or on behalf of the Purchaser in connection with any breach of a representation or warranty hereunder (including, without limitation, those set forth in Section 3.02(i) and 3.02(jjj)) relating to a violation of a predatory or abusive lending law applicable to such Mortgage Loan, plus (iv) third party expenses incurred in connection with the transfer of the Mortgage Loan being repurchased; less amounts received or advanced in respect of such repurchased Mortgage Loan which are being held in the Custodial Account for distribution in the month of repurchase, plus (v) any unreimbursed Servicing Advances or Servicing Fee, plus (vi) all fees and expenses of Purchaser's outside counsel and court costs incurred in connection with the enforcement of the Seller's repurchase obligation.

13. Terwin followed this formula as to each of the Early Payment Default Loans to arrive at the Repurchase Price. For Loan Nos. 100071582, 100074417, and 100081918, Terwin has subtracted from the Repurchase Price the proceeds of any realization, by foreclosure or otherwise, for each such Early Payment Default Loan. For Loan Nos. 100068506, 100071237, 100071581, 100073304, 100073941, and 100078347, Terwin has subtracted from the Repurchase Price the estimated proceeds of any realization. For Loan Nos. 100073942, 100074418, and 100078351, there were no proceeds because the loans were second lien loans and the value of the underlying property was less than the value of the first lien loan.

14. Using the aforementioned methodology as to each of the twelve (12) Early Payment Default Loans, Terwin arrived at the amount of its realized losses. It is those realized losses as to which Terwin requests an award of damages. Attached hereto as Exhibit A is a spreadsheet setting forth Terwin's realized losses as to each of

the twelve (12) Early Payment Default Loans, for a total liquidated amount of \$1,794,670.

15. The computation of realized losses set forth on Exhibit A, by the nature of how it was made, includes unpaid interest through the date of computation, which was February 22, 2008. Interest to date from February 22, 2008, is running at the amount of \$442 per diem. Terwin computed this by multiplying \$1,794,670 by the New York statutory interest rate of 9%, and dividing the result by 365 days.

**Atlas' Default in its Obligations  
to Reimburse Terwin for Premium Recapture**

16. This action also concerns eight (8) Mortgage Loans that Terwin purchased from Atlas, which were prepaid in full by the borrower (the "Premium Recapture Loans").

17. Pursuant to § 3.06 of the Purchase Agreement, entitled "Purchase Price Protection," Atlas agreed as follows:

With respect to any first lien Mortgage Loan that prepays in full at any time prior to the fourth Due Date immediately following the Closing Date, the Seller shall reimburse the Purchaser the amount (if any) by which the Purchase Price paid by the Purchaser to the Seller exceeded 100% of the outstanding scheduled principal balance of the Mortgage Loan as of the Cut-off Date, within thirty (30) days of such payoff. With respect to any second lien Mortgage Loan that prepays in full during the twelve (12) month period from and after the Closing Date, the Seller shall reimburse the Purchaser the amount, if any, by which the Purchase Price paid by the Purchaser to the Seller exceeded 100% of the outstanding scheduled principal balance of the Mortgage Loan as of the Cut-off Date times a fraction, the numerator of which is equal to the number of months remaining from the date of prepayment in full until one year from the related Closing Date and the denominator of which is twelve (12), within thirty (30)

days of such payoff. Upon any assignment of a Mortgage Loan and/or this Agreement, the Purchaser may at its option retain its rights under this Section 3.06 notwithstanding such assignment.

18. Terwin gave Atlas written notice of such Premium Recapture Loans and of Atlas' obligation to reimburse Terwin the Premium Recapture, in accordance with the terms of the Purchase Agreement.

19. Terwin followed the formula set forth in § 3.06 of the Purchase Agreement as to each of the eight (8) Premium Recapture Loans. The computations of the Premium Recapture for each of the eight (8) Premium Recapture Loans are set forth on Exhibit B.

20. The computation of the Premium Recapture also includes interest through the date of computation, which was February 22, 2008, for a total amount of \$27,785. Interest to date from February 22, 2008, is running at the amount of \$6.85 per diem. Terwin computed this by multiplying \$27,785 by the New York statutory interest rate of 9%, and dividing the result by 365 days.

### **Conclusion**

21. Terwin respectfully requests that the Court grant a default judgment against Atlas in the total of these amounts:

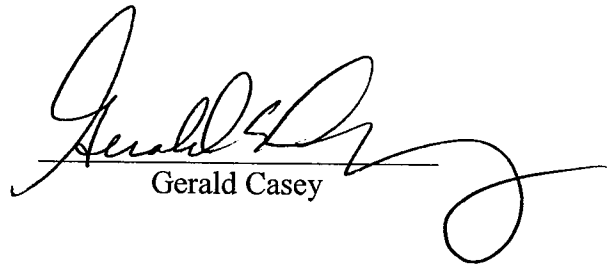
- Breach of contract damages for twelve (12) Early Payment Default Loans in the amount of \$1,794,670, computed as set forth above; plus
- Interest from February 22, 2008 to the date of entry of judgment at the per diem rate of \$442; plus

- Breach of contract damages for eight (8) Premium Recapture Loans in the amount of \$27,785, computed as set forth above; plus
- Interest from February 22, 2008 to the date of entry of judgment at the per diem rate of \$6.85.

22. No part of the total requested judgment amount has been paid.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 22nd day of February, 2008

  
Gerald Casey

**Exhibit A**

The Winter Group  
APM: AMFC Realized Loss Summary  
as of 20080220

Inv #	cust #	Item	rate	purchase bal	current bal	bal at liquidation	proceeds	advances/fees/in terest up to liquidation	paid thru date	purchase price	realized loss	Liquidation Date	days interest after liquidation to 2/22/2008	Interest after liquidation at %	loss due
100071582	060002122	2	14.50	48,568	-	48,568	10,214	-	01/01/2007	100.00	38,354	5/18/2007	280	2.648	41,002
100073942	60002218	2	13.00	137,937	-	137,805	-	4,600	12/01/2006	100.50	142,406	7/31/2007	206	7.233	149,639
100074417	60002186	1	8.13	332,000	-	331,999	219,228	19,709	12/01/2006	100.48	132,480	11/30/2007	84	2.744	135,224
100074418	60002188	2	16.25	83,000	-	82,854	(2,269)	2,366	01/01/2007	96.82	87,586	5/31/2007	267	5.766	83,352
100078351	60002336	2	14.50	45,093	-	45,093	-	1,907	01/01/2007	99.50	46,969	9/30/2007	145	1.679	48,649
100081818	15400472	1	7.38	520,000	-	520,000	444,903	31,911	03/01/2007	103.25	107,008	1/31/2008	22	5.80	107,589
											554,803			20.651	575,454



The Winter Group  
APM: AMFC Outstanding Repurchase Severity  
as of 20080220

twg #	cust #	lien	rate	current balance	paid thru date	purchase price	principal	premium	days interest to	interest	advances	repurchase total	re-price	estimated proceeds	estimated loss due
100068506	002002289	1	8.13	560,000	9/1/2007	101.50	560,000	8,401	174	21,680	11,821	602,012	60.65	339,640	262,372
100071237	060000183	1	8.25	111,157	12/1/2006	103.00	111,157	3,335	448	11,256	3,575	129,322	49.09	54,567	74,756
100071581	060002121	1	8.25	113,400	1/1/2007	100.00	113,400	-	417	10,688	2,085	126,174	47.69	54,080	72,093
100073304	041000024	1	7.50	758,000	8/1/2007	102.58	758,000	19,569	205	31,929	-	809,498	57.76	437,821	371,677
100073941	60002216	1	7.25	552,000	12/1/2006	101.63	552,000	8,998	448	49,120	15,113	625,231	57.91	319,663	305,568
100078347	60002335	1	8.25	180,400	1/1/2007	103.00	180,400	5,412	417	17,003	1,985	204,801	39.94	72,052	132,749
												2,497,039		1,277,823	1,219,216

2/22/2008 5:53 PM

Atlas Mortgage - Exhibit A to Casey Affidavit

**Exhibit B**

Atlas Mortgage Funding Corp  
Exhibit B to Casey Affidavit - Premium Recapture Owed

twg #	cust #	borrower	loan buy date	purchased bal	loan buy price	payoff date	lien position	premium due	notice date	days interest after to 2/22/2008	interest after	total due
100076038	60002237	WILLIAMSON	10/26/2006	820,000.00	102.0000	1/16/2007	1	16,400.00	1/16/2007	400	1,617.53	18,017.53
100082831	041000055	Calvert	2/21/2007	30,000.00	101.9736	5/16/2007	2	493.40	5/24/2007	274	33.33	526.73
100063648	038000059	HANSEN	5/23/2006	53,800.00	103.5000	2/27/2007	2	470.75	3/27/2007	332	38.54	509.29
100076420	002002342	MOODY	11/2/2006	400,000.00	101.1250	6/6/2007	2	1,874.99	6/25/2007	242	111.88	1,986.87
100073179	60002172	FURR	9/5/2006	150,500.00	100.9236	12/29/2006	2	1,042.51	4/20/2007	308	79.17	1,121.68
100076416	60002247	HUDSPETH	10/17/2006	47,000.00	100.9236	12/19/2006	2	361.74	1/18/2007	400	35.68	397.42
100074614	60002179	HURLEY	11/2/2006	375,935.38	102.6236	5/23/2007	2	4,931.50	6/25/2007	242	294.27	5,225.77
								25,574.89			2,210.41	27,785.30